

**Before  
The Ohio House of Representatives  
Public Utilities Committee**

**Testimony on Substitute House Bill 389  
(Regarding Utility Charges to Consumers for Energy Efficiency)**

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**November 17, 2021**

Hello Chair Hoops, Vice-Chair Ray, Ranking Member Smith, and Committee members. I hope you and your colleagues are well.

Consumers' Counsel Weston and I thank you and the bill sponsors (Rep. Seitz and Rep. Leland) for this opportunity to present opponent testimony on Substitute House Bill 389. I am testifying on behalf of the Office of the Ohio Consumers' Counsel, for Ohio residential utility consumers. The substitute bill contains only minor improvements for consumers, from the as-introduced bill. Accordingly, most of the consumer concerns stated in our original testimony remain applicable.

Energy efficiency is a good thing. It is also something that Ohioans can and do obtain in the competitive market from businesses. Ohioans can obtain it without legislation, without the involvement of utilities and without the higher charges on their electric bills that will result from Substitute HB 389. (For at-risk Ohioans, financial assistance should be provided for utility services.)

OCC strongly recommends conservatism in legislation that would increase utility rates that Ohioans pay. This bill may be characterized as an energy efficiency bill but it is also about favorable ratemaking for utilities at consumer expense. A better approach for green energy purposes (and for Ohioans' electric bills) would be to enact HB 351. HB 351 would end the tainted HB 6 subsidy for coal power plant pollution that Ohioans are paying to AEP, Duke and AES.

Two of the claimed consumer protections in the substitute bill are a \$1.50 cap on residential monthly charges and an opportunity for consumers and smaller businesses to opt out. But these consumer protections do not live up to their advertising.

Regarding the claimed \$1.50 monthly billing cap, it can be exceeded by charges to consumers for profits (incentives), cost deferrals and lost revenues, as in the as-introduced bill. The LSC bill analysis did not quantify any projections for these extra charges to consumers. None of these charges, which favor utilities at consumer

expense, should be allowed on consumers' bills or at least not allowed above the \$1.50 cap.

Regarding the lost revenues charge (lines 125-133; 251-258), it is similar to the decoupling charge for FirstEnergy that was in House Bill 6 and then repealed. Recall that a FirstEnergy executive referred to that decoupling charge as utility recession-proofing, which would have been at consumer expense.

Regarding profits (so called "incentives"), Substitute HB 389 enriches electric utilities by allowing millions of dollars in charges to Ohioans for utility profits, in addition to charges for the cost of the energy efficiency programs. (Lines 236-242) That is similar to the hundreds of millions of dollars in profits that the PUCO allowed utilities to charge consumers under the former required energy efficiency programs (now repealed by HB 6).

Regarding deferrals, the substitute bill yields to utilities on their preference for deferrals. The use of deferrals is a way for the utilities to circumvent the \$1.50 cap, at consumer expense. (Lines 162-166) We had hoped that progress was being made at the PUCO to eradicate the use of lost revenues for bolstering utility revenues outside of a rate case and at consumer expense. This bill will dash such consumer hopes.

Regarding the consumer opt-out, the substitute bill continues to lock consumers into the program and its charges for up to five years, if they do not initially opt out. (Line 175) Consumers should be allowed to opt out annually. The substitute bill does add "alternative methods," such as telephonic or internet (lines 333-334), for consumers to opt out. That is an improvement.

But the substitute bill leaves consumers exposed to a much too limited opt-out window (21 days after the postmark on the utility's notice) and to an inadequate notice process for millions of consumers to even learn of their right to opt out. (Lines 318-326) Consumers should be allowed at least 60 days to opt out. And the substitute bill should require plenty of advance notice for the opt out and a public information campaign to inform consumers of their right to opt out. Also, larger business customers are given preferential treatment by being automatically opted out in the bill, with a right to opt in (lines 298-301); residential consumers should be given the same treatment – opted out unless they opt in.

Also bad is that, instead of making needed reforms of PUCO processes, the substitute bill still limits too much the opportunity for consumer advocacy and due process at the PUCO, to the benefit of utilities against consumers. After the utilities file to implement their energy efficiency programs, the PUCO is required to conduct its process and issue an order within 180 days. (Lines 151-161) A 180-day timeline for consumers to investigate and make recommendations on the utilities' application – and for the PUCO to write and issue its order – prevents due process. The parties' review process should be 180 days with expedited utility responses to discovery, followed by 75 days for the

PUCO to issue an order. Extensions should be allowed if the utilities are obstructing others' investigations.

Also problematic is that the substitute bill favors utilities with one of the worst regulatory processes ever seen, which is right out of the unfair anti-consumer ratemaking of the 2008 energy law for electric security plans. The bill empowers the *utility* to withdraw its energy efficiency application, *after a PUCO order*, if it does not like how the PUCO ruled on its and various parties' proposals. Essentially, the utility can veto the ruling of its regulator (PUCO), if the PUCO adopts protections advocated by OCC (or others) or rejects the utility's proposal. (Line 167-171) That is a backwards process that gives the utilities unfair leverage over consumer parties and the PUCO in both settlement negotiations and litigation. Legislative delegation of authority should be to the PUCO and OCC, not to the utility monopolies. Alternatively, the state consumer advocate (OCC) should be given a reciprocal right to reject the PUCO's order.

Former PUCO Commissioner Cheryl Roberto wisely wrote about the unfairness of such a utility veto, in a separate opinion involving FirstEnergy's right to withdraw its electric security plan under the 2008 law. She wrote:

I have no reservation that the parties are indeed capable and knowledgeable but, because of the utility's ability to withdraw, the remaining parties certainly do not possess equal bargaining power in an ESP action before the Commission. The Commission must consider whether an agreed-upon stipulation arising under an ESP represents what the parties truly view to be in their best interest - or simply the best that they can hope to achieve when one party has the singular authority to reject not only any and all modifications proffered by the other parties but the Commission's independent judgment as to what is just and reasonable. (See PUCO Case Nos. 08-935-EL-SSO, et al. Second Opinion and Order (March 25, 2009)).

In conclusion, energy efficiency is a good thing. It is also widely available to consumers in the marketplace without the involvement of utilities. Alternatively, energy efficiency could be offered with the involvement of utilities at least partly on their own dime. It is unwarranted to implement another subsidized utility energy efficiency program at consumer expense (and just after the repeal of the program in House Bill 6).

Substitute HB 389 is a slight improvement for consumers over the as-introduced bill. But the minor improvements do not offset the utility-friendly ratemaking and PUCO process for increasing Ohioans' electric bills. Instead, the legislature could consider adopting an approach to energy efficiency where utility consumers may voluntarily obtain financing on utility bills for energy efficiency measures, without the involvement of subsidies or charges to other consumers. In any event, we encourage the Committee to make our recommended changes to the substitute bill. For consumer protection, we continue to oppose the legislation in its current form. Thank you for your consideration.